

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

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| PROFESSIONAL FIRE FIGHTERS OF |) | |
| EASTERN MISSOURI, IAFF LOCAL 2665, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Public Case No. UC 2014-007 |
| |) | |
| CITY OF HAZELWOOD, |) | |
| |) | |
| Respondent. |) | |

DECISION

The Professional Fire Fighters of Eastern Missouri, International Association of Fire Fighters, Local 2665 (Local 2665), filed a unit clarification petition asking that Captains and Battalion Chiefs be added to the bargaining unit of Firefighter Privates employed by the City of Hazelwood Fire Department (City) that it currently represents. The City objects, arguing that (1) this Board is prohibited by § 511.350, RSMo, from modifying this bargaining unit because its description was set by a 1978 court decree, and (2) the Captains and Battalion Chiefs are supervisors who cannot be included in a bargaining unit with their subordinates.

The Board concludes that, as there is a labor agreement between the parties that does not expire until June 30, 2015, the contract bar rule applies in this case to make the petition untimely. Even if the contract bar rule did not apply, the Board would be prohibited by § 511.350, RSMo, from making any change in the description of this bargaining unit because that would modify the court decree that defines the unit.

JURISDICTION AND PROCEDURAL BACKGROUND

The question in this case concerns the proper makeup of a bargaining unit. This Board is authorized to hear and decide issues related to the appropriateness of bargaining units. § 105.525, RSMo.

The Board held a hearing in Hazelwood, Missouri, on June 24 and July 31, 2014. Board Chairman Andrew C. (Butch) Albert, Jr., presided in person over both days of the hearing.

Employer Member Leonard Toenjes and Employee Member Robert Miller were present in person on the first day of hearing and have reviewed the transcript of the second day of the hearing and the exhibits presented. Representatives of Local 2665 and the City attended both days of the hearing and had a full opportunity to present evidence and make arguments. They also filed post-hearing briefs.

Based on its review of the whole record, including the evidence presented, arguments made, and briefing filed, the Board issues these Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

In 1977, the St. Louis County Fire Fighters Association, Local 398 of the International Association of Fire Fighters (Local 398) petitioned this Board in its Case No. 77-014 to represent firefighters employed by the City. Local 398 and the City could not agree on a description of an appropriate bargaining unit and, after a hearing, this Board ruled the appropriate bargaining unit to be “[a]ll Fire Department employees of the City . . . including the positions of probationary Fire Fighter, Fire Fighter, and Lieutenant, but excluding the positions of Captain and Fire Chief.” The Board then conducted an election among the members of this unit. A majority of the unit voted in support of representation by Local 398. In conformity with the election results, the Board certified Local 398 as the unit’s exclusive bargaining representative on January 30, 1978.

Meanwhile, Local 398 appealed the Board’s decision as to the appropriate bargaining unit to the St. Louis County Circuit Court. The City intervened in that action. Local 398 and the City reached an agreed resolution of their dispute and asked the Court to approve the agreement as a consent decree. The Court did so on December 1, 1978. The consent decree reversed the decision of the Board, providing instead that “[t]he appropriate bargaining unit consists of Firefighters or Privates only, and excludes the positions of Probationary Firefighters, [L]ieutenants, Captains and Fire Chief.” The Board, having received no prior notice of the

agreement of Local 398 and the City and the entry of the consent decree, moved to set that order aside. On July 6, 1979, following a hearing and briefing, the Court overruled the Board's motion. On that same date, Local 2665 moved to intervene in the court case.

Local 2665 had previously, on January 24, 1979, petitioned the Board, in its Case No. 79-003, for recognition as the exclusive bargaining representative of all Privates, Probationary Personnel, and the Lieutenant employed by the City's Fire Department. In its petition, Local 2665 acknowledged that Local 398 was at that time the recognized bargaining representative of the City's Firefighters. Local 2665 also stated that Local 398 was no longer associated with the International Association of Fire Fighters and that no labor agreement between Local 398 and the City had been finalized.

Along with its motion to intervene in the court case, Local 2665 filed a letter with the Court asserting the case to be moot because Local 398 was no longer associated with the International Association of Fire Fighters. Local 2665 also asserted "that the unit appropriate for bargaining was the one determined by the State Board of Mediation[.]" As an alternative, Local 2665 argued that "an election should be conducted to determine the representative of any unit found appropriate in the event that this Court determined some unit to be appropriate." Local 2665's final alternative position was that the Board "should simply be compelled to conduct an election for the rank of fire fighter private[.]" The Court took no action on Local 2665's motion to intervene. No party appealed the Court's order that the appropriate bargaining unit consisted of Firefighter Privates only. That order has not been disturbed since.

In proceedings under Local 2665's 1979 petition to represent the City's Firefighters, the Board conducted an election in a unit consisting of the Privates only. After a majority of the Privates voted for Local 2665 as their bargaining representative, the Board certified Local 2665 as the unit's bargaining representative on August 21, 1979. It is this certification that Local 2665 seeks to have clarified.

Local 2665 and the City are currently parties to a labor agreement covering Local 2665's unit of City employees. The City's governing council adopted an ordinance that approved the execution of this agreement. Under Article One of the agreement:

The Employer recognizes the Union as the exclusive bargaining representative for the employees within the appropriate bargaining unit consisting of all Privates of the Hazelwood Fire Department, but excluding the rank of Fire Chief, Assistant Fire Chief, Deputy Chief, Deputy Fire Marshal, Battalion Chief, Captain, and Probationary Firefighter.

This agreement expires on June 30, 2015.

CONCLUSIONS OF LAW

I. CONTRACT BAR RULE APPLIES

As the Board recently restated its use of the contract bar rule, "petitions to the State Board of Mediation are untimely if the bargaining unit subject to the petition is covered by an active labor agreement, unless the petition is filed no earlier than 90 days and not later than 61 days before the termination of the agreement." *State v. CWA, Local 6355*, Public Case No. UC 2012-003, at 5 (SBM 2012). The petition will be dismissed if not filed within this window. *Id.* The intent of the contract bar rule is preservation of stability in the employer-employee bargaining relationship. *Id.* "In applying the contract bar rule, the Board balances the competing interests of the employees' freedom of choice in selecting a bargaining representative and the stability of collective bargaining agreements between an employer and the employees' elected union." *Id.* at 5-6 (quoting *Int'l Ass'n of Firefighters, Local 2665 v. North Jefferson County Ambulance Dist.*, Public Case No. R 2000-049, at 13-14 (SBM 2001)). The Board applies the contract bar where:

- (1) the employer has met, conferred, and discussed proposals concerning customary terms and conditions of employment with the employees' bargaining representative;
- (2) agreements reached in those discussions have been reduced to writing;
- (3) the employer has presented the written agreement to the appropriate governing body;
- (4) the governing body has adopted those proposals; and

(5) the terms of the agreement between the employer and bargaining representative that has been adopted clearly cover the employees that are the subject of the petition pending before the Board.

CWA, Local 6355, Public Case No. UC 2012-003, at 6.

The labor agreement between Local 2665 and the City meets these conditions. Although it could be argued that the petition pending before the Board involves only the Captains and Battalion Chiefs that Local 2665 seeks to add to the bargaining unit and who are not covered by the current agreement, the Privates who are covered by agreement are also necessarily the subject of this petition. The Board's decision on the petition will directly and significantly affect their interests as members of the unit.

Although the contract bar rule was designed to apply in the case of petitions for certification and decertification, the Board will also apply the bar to dismiss a unit clarification petition, which is the type of petition involved in this case, "if, in the particular circumstances of the case, allowing the petition would be disruptive of the parties' collective bargaining relationship." *Id.* Here, Local 2665 asks that the bargaining unit be clarified by adding Captains and Battalion Chiefs into the existing unit. But the current collective bargaining agreement between Local 2665 and the City specifically excludes Captains and Battalion Chiefs from the unit. The Board finds that clarification of the bargaining unit here to add positions explicitly excluded by an active collective bargaining agreement would be disruptive of the parties' bargaining relationship by contradicting the freely bargained agreement of the parties.

Finding that consideration of the unit clarification petition filed in this case would disrupt the parties' collective bargaining relationship, the Board will apply the contract bar here.

II. Board Prohibited by § 511.350, RSMo, from Modifying Bargaining Unit

Given that the contract bar applies, the Board would not normally proceed to another issue. But the window in which a petition may be filed regarding the bargaining unit at issue in this case will occur in the next year and it is not unlikely that Local 2665 will file another unit

clarification petition at that time. For this reason, in the interests of administrative economy, the Board will address a more basic issue affecting its power to clarify this unit.

In 1978, the Circuit Court of St. Louis County, Missouri, reversed this Board's determination of the appropriate bargaining unit of Firefighters employed by the City through its entry of the consent decree defining the appropriate bargaining unit as including Firefighter Privates only, with Captains (and others) specifically excluded. Now Local 2665 asks this Board to modify that unit to include ranks in addition to the one (and only one) rank that the Court ruled appropriate for the unit, including a rank that the Court specifically placed out of the unit. The Board is prohibited from granting this request by § 511.350.4, RSMo. This provision states:

Notwithstanding any other provision of law, no judgments or decrees entered by any court of competent jurisdiction may be amended or modified by any administrative agency without the approval of a court of competent jurisdiction.

The Board is, of course, an administrative agency. A Court decree defines the appropriate bargaining unit of Firefighters employed by the City to include only Firefighter Privates. That decree remains in effect and there has been no approval given by a Court to the Board to consider amending or modifying the decree. Therefore, the Board cannot grant the modification requested by Local 2665.

The Board recognizes that the Court decree at issue here was reached in the appeal of the Board's Case No. 77-014, involving the representation petition of Local 398, while the certification of Local 2665 as the exclusive bargaining representative of the unit of Firefighters employed by the City occurred in Case No. 79-003. But the bargaining unit in which the election in Case No. 79-003 was held is the one established by the Court decree entered in the appeal of Case No. 77-014. That decree defined the appropriate bargaining unit of the City's Firefighters and the Board was not at liberty to alter that definition just because Local 2665 filed a separate petition to challenge Local 398 for the designation as exclusive bargaining representation of that unit. Local 2665 acknowledged that the Court had established the makeup of the unit that it sought to represent in Case No. 79-003 by its unsuccessful attempt to

intervene in the appeal of Case No. 77-014 where (as shown by the letter it filed with the motion to intervene) Local 2665 intended to challenge the Court's unit description.

Local 2665 argues that the Court order of December 1, 1978, that is at issue here is not a Court judgment or decree to which § 511.350.4 applies because Mo. S. Ct. Rule 74.01(a) requires that a judgment or decree be specifically "denominated [as a] 'judgment' or decree'["]. This requirement, however, was not a part of the Rule 74.01(a) in 1978. Even if this technical requirement of Rule 74.01(a) governs the application of § 511.350.4 to Court orders entered after the implementation of that requirement, the Board concludes that the requirement is not applicable to orders entered before that time.

The Board concludes that it is prohibited by § 511.350.4 from clarifying Local 2665's bargaining unit because the unit is defined by a Court decree.

ORDER

Due to the application of the contract bar rule and of § 511.350.4, the Board dismisses the petition filed in this case.

Signed this 23rd day of December 2014.

STATE BOARD OF MEDIATION

Butch Albert
Chairman



Leonard Toenjes
Employer Member



Robert Miller
Employee Member